

Ministerial consultation sheds light on the direction of water management in SA

On the 15th of February, Minister Nkwinti from the Department of Water and Sanitation hosted a consultative forum on transformation in the water sector. Although the size and nature of the consultation made it difficult to meaningfully participate, the consultation shed some light on four key aspects related to water management in South Africa.

Transformation and regulation

Transformation and the reallocation of water use authorisations to previously disadvantaged entities is a standing objective of both the National Water Act and the Constitution itself. Lack of implementation has however stifled these good intentions over the past 25 years as quantities of water available for allocation in all of South Africa's major irrigation schemes were put aside as far back as 20 years ago for allocation to previously disadvantaged farmers. Sadly, most of these allocations have still not been made.

Despite the challenges surrounding implementation, the Department adopted policy back in 2013 with the aim of accelerating water reform. The key elements of the proposals are to adopt a use-it or lose-it approach, prohibit the trading of water rights and to solidify the BBBEE score of an applicant as central criteria that must be considered when assessing water use applications. More recently, the department has also proposed imposing a sunset clause on existing lawful use holders in an attempt to transform these old order rights into formal water licences.

Many of these policy shifts will also require legislative amendments to affect. Hence, the Department has been mooting a new Water Bill for the past 5 years but nothing has been published to date. The latest indication shared at the consultation was that the DWS may seek to enact regulations to the National Water Act to give effect to these ideals, although the legality of this proposal could well be scrutinised as regulations cannot go beyond that which the Act empowers the regulator to do.

Water Master Plan and Operation Phakisa

An update was also provided on the water Master Plan, an overarching document intended to guide water management in South Africa. This document has been noted by Cabinet and the Department is planning to host a Water and Sanitation Phakisa, whereby stakeholders would be invited to draft action plans to give effect to the Phakisa on key issues such as municipal water use, industrial water use, the national water mix, research, agricultural water use, policy and regulation.

Whilst a Phakisa may come up with solutions to the current implementation plan, its focus may preclude in-depth policy discussions on the Water Master Plan itself. Although the plan

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has been consulted on with selected stakeholders at workshops, it has never been published in the Government Gazette for written inputs, a critical step in the accepted practice of policy formulation in South Africa.

Institutional arrangements

The special adviser to the Minister gave a presentation proposing key changes to the institutional arrangements currently in place. The presentation highlighted the gap that exists between DWS, district and local municipalities in the provision of basic water and sanitation services. The presentation furthermore outlined the need to rationalise the national approach to water regulation as only the DWS and the Water Research Commission operate on a national scale under the Minister, with the DWS retaining key functions that are supposed to be exercised by Catchment Management Authorities (CMAs).

The presentation proposed a comprehensive overhaul including the proper delegation of functions to CMAs, and the rationalisation of 6 national bodies that report directly to the Minister, namely:

- A Water and Sanitation Authority to oversee the CMAs;
- A Water and Sanitation Regulator to set water tariffs independently;
- The DWS to focus on policy;
- A Council of Water Service Authorities;
- The Water Research Commission; and
- International Water Institutions for cross-border management.

There are however concerns as to how these structures will be funded.

Transformation within Irrigation Boards and Water User Associations

The inclusivity and role which Water User Associations (WUA) play in water reform became a key focus for the discussion. Whilst the figures are disputed, it became clear that a large number of Irrigation Boards have not converted to Water User Associations under the Act as of yet. Representatives from WUAs highlighted that the Minister has powers in the National Water Act to provide guidelines to assist this process, although no guidelines have been issued to date.

The extent to which WUAs promote the interest of new age farmers was also placed in the spotlight, with several new age farmers noting a lack of inclusivity and the tariffs imposed by WUAs on consumption and maintenance of infrastructure as key impediments. On the other hand, the WUAs outlined the challenges they face in enforcing compliance with the law, with non-revenue water use highlighted as the key challenge. It seems as if the WUAs have little choice but to step into the void and fulfil certain functions related to enforcement in the absence of the DWS. However, these WUAs are hamstrung to an extent as only the DWS has the statutory authority to require the compulsory metering of water by users.

If the DWS and the WUAs can reach agreement on key aspects related to inclusivity and their role in carrying out enforcement functions, it will certainly be in the best interest of all lawful water users. WUAs should be seen as an asset for water management in South Africa,

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that can complement the role played by the DWS to encourage compliance and transformation in the sector.

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